



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Mr. Lloyd Helm
Peterson Petroleum of New Hampshire
PO Box 749
Moultonborough, NH 03254

Re: Peterson Petroleum of New Hampshire.
Route 25 and 109
Moultonborough, NH

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
NO. AF 2000-019**

May 5, 2000

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Peterson Petroleum of New Hampshire, Inc. (Referred to herein as "PPNH"), pursuant to RSA 146-A:15 and Env-C 601.05. The Division is proposing that fines totaling \$2,000 be imposed against PPNH for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Waste Management Division ("the Division") is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH 03301.
2. Peterson Petroleum of New Hampshire, Inc. (PPNH) is a New Hampshire Corporation with a principal place of business at the junction of Routes 25 and 109, Moultonborough, NH, and a mailing address of PO Box 749, Moultonborough, NH 03254.

III. Summary of Facts and Law Supporting Claim(s)


RSA 146-A:11-c requires the Commissioner of the Department of Environmental Services ("DES") to adopt rules to prevent, report, remove and contain discharges of oil and other petroleum products and by-products ("oil") and to mitigate or prevent damage due to oil discharges. Pursuant to this authority, the Commissioner has adopted, inter alia, Env-WM 1402, applicable to aboveground bulk oil storage facilities.

- 2 Pursuant to RSA 146-A:15, the Commissioner has adopted Env-C 615 to establish the schedule of fines for violations of RSA 146-A.

In October 1998, the Division received a telephone call from the Moultonborough Fire Department reporting observations that oil was frequently being transferred from petroleum transporter tanker trucks to oil delivery trucks at the PPNH location bordering the junction of Route 25 east and Route 109 north in Moultonborough, NH.

4. On November 12, 1998, Division staff observed a petroleum transporter tanker parked alongside a small concrete pad at the site of the PPNH facility located at the junction of Routes 109 and 25 in Moultonborough, NH. An oil delivery truck with the name Peterson Petroleum was parked alongside of the concrete pad. A petroleum transfer hose extended from the trailer with 5-gallon

pails on the concrete pad, placed beneath the hose connections, suggesting the pails use as spill buckets. This configuration indicates the transporter tanker trailer was being used as a petroleum bulk storage tank and petroleum transfers were occurring on the site.

5. On January 28, 1999, DES sent a Letter of Deficiency ("LOD") to PPNH informing them that transferring oil from a petroleum transporter tanker truck to another vehicle for further distribution at this location was operating this facility as if it were an aboveground petroleum storage tank ("AST") facility and was therefore regulated by Env-Wm 1402. The LOD described the requirements for an AST facility and also explained the parameters upon which petroleum distribution trailers may be operated without being subject to the AST rules.
6. Several weeks after the LOD was forwarded to PPNH, Division staff met with Mr. Lloyd Helm of PPNH to discuss the content of the LOD, and to clearly present DES' position on the transfer of oil from petroleum transportation trailers. Staff also informed Mr. Helm of the regulatory requirements to establish a bulk petroleum storage facility and what regulations would be needed to be complied with in order for petroleum transfers to continue at their Moultonborough location and anywhere else in New Hampshire.
7. On January 24, 2000, DES received a complaint from a neighboring business owner stating he observed petroleum being transferred from a petroleum transportation tanker truck directly to another truck on January 22, 2000. The complainant summoned the Moultonborough Police Department to investigate. Photographs were also taken and forwarded to DES.
8. The photographs showed that there was a hose between the two petroleum transporter tanker trucks. Also, there was no secondary containment or any steps taken to control the impact of a release should one have occurred. Based on the placard displayed on the back of one of the trailers in the photograph, petroleum being transferred during this incident was gasoline.
9. The Division obtained a copy of the incident report from the Moultonborough Police Department.  The police report stated that PPNH personnel were testing a new hose. The report also stated that there was minor gasoline spillage, suggesting that petroleum had been transferred between the transporter tanker trucks. According to the police report, the spillage was cleaned up immediately.
10. Based on the activities observed in the photograph and from a review of the police report, the Division concluded that PPNH continued to transfer fuel between trucks, thus operating as an AST facility, following issuance of the LOD.

DES approval is required pursuant to Env-Wm 1402.17 to construct and operate an AST facility. Additionally, all regulated AST facilities are required to be registered with DES pursuant to Env-Wm 1402.05.

12. DES has no record of an AST facility being registered to PPNH at the Moultonborough location, nor was there ever an approval from DES to construct a regulated AST facility at this site.

IV. Violation Alleged

PPNH has violated Env-Wm 1402.17 by operating an unpermitted and unregistered aboveground storage tank facility at a location bordering the junction of Route 25 and Route 109 in Moultonborough, NH.

V. Proposed Administrative Fines

For the violation identified in IV above, Env-C 615.03(a) specifies a fine of \$2,000.

The total fine being sought is \$2,000.

VI. Hearing, Required Response

PPNH has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, July 10, 2000 at 9:00 a.m. in Room C-110 of the DES offices at 6 Hazen Drive in Concord, NH.**

Pursuant to Env-C 601.06, PPNH is required to respond to this notice. Please respond no later than June 2, 2000, using the enclosed form as follows:

- If PPNH plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, at the address noted on the form.
2. If PPNH chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
 3. If PPNH wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to Mr. Ballentine and call Mr. Ballentine to indicate PPNH's interest in settling.

PPNH is not required to be represented by an attorney. If PPNH chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If PPNH wishes to have a hearing but is unable to send an authorized representative to the hearing as scheduled, PPNH must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If PPNH does not notify Mr. Ballentine in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that PPNH committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by "a preponderance of the evidence" means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that PPNH committed the violation(s) and that the amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

- ★ Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below that **PPNH proves, by a preponderance of the evidence, applies in this case:**

The violation was a one-time or non-continuing violation, and PPNH did not know about the requirement when the violation occurred, and the violation has not continued or reoccurred as of the

time of the hearing, and any environmental harm or threat of harm has been corrected, and PPNH did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, PPNH was making a good faith effort to comply with the requirement that was violated.
3. PPNH has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to PPNH's case, which was not known to the Division at the time the fine was proposed.

★★★★★ **IMPORTANT NOTICE** ★★★★★

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is PPNH's opportunity to present testimony and evidence that PPNH did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If PPNH has any evidence, such as photographs, business records or other documents, that PPNH believes show that PPNH did not commit the violation(s) or that otherwise support PPNH's position, PPNH should bring the evidence to the hearing. PPNH may also bring witnesses (other people) to the hearing to testify on PPNH's behalf.

If PPNH wishes to have an informal meeting to discuss the issues, PPNH must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

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Information regarding this proposed fine may be made available to the public via DES's Web page (www.state.nh.us/des). If PPNH has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

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Philip J. O'Brien, Ph.D., Director
Waste Management Division

Enclosure (NHDES Fact Sheet #CO-2 1999)

Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
Charles Connell, Administrator Town of Moultonborough
Russell, C. Wakefield, Chairman Moultonborough Board of Selectmen
George G. Lombardo, P.E., Administrator, NHDES - ORCB
Lynn A. Woodard, P.E. NHDES-ORCB
Thomas H. Willis, P.E. NHDES-ORCB